

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

HIGH VOLTAGE ELECTRIC CO.

Employer

and

Case 4-RC-20277

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 98, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer was served with a Notice of Representation Hearing by first class mail on August 17, 2001,<sup>1</sup> scheduling a hearing thereon for August 27. Neither the Employer nor its attorney appeared at the hearing.<sup>2</sup>

The Employer is an electrical contractor with a facility in West Chester, Pennsylvania. The Employer currently employs five employees and recently laid off a sixth employee. According to the most recent Dun and Bradstreet Business Information Report, of which I take administrative notice, the Employer is a Pennsylvania corporation owned by Bruce Highland and has annual sales of \$250,000. It started in business in 1983.

---

<sup>1</sup> All dates are in 2001 unless otherwise indicated.

<sup>2</sup> On Friday, August 24, Counsel for the Employer requested that the hearing scheduled for August 27 be postponed until September 4 on the ground that the Employer's owner and president was away on vacation and unavailable to attend the hearing. On August 27, the request was denied. According to the Hearing Officer, although the Employer and its attorney were informed that the hearing would proceed, they notified the Regional Office that they would not attend.

Employees of the Employer testified that during the past twelve months, the Employer has been performing several jobs in Pennsylvania for University City Housing Company, Inc. (herein UCH), a property management and telecommunications company based in Philadelphia. The largest of these jobs involves the performance of all of the electrical work for a three to four story church that is being converted into a school. The Employer is running pipe, installing electrical outlets and boxes, pulling and running wires, installing air conditioning units, and performing phone and data work, among other things. The job began approximately one-and-a-half months prior to the hearing and is expected to continue for at least a year. Since the job began, about three of the Employer's employees have worked there each day. The Petitioner's Business Agent Timothy Browne testified that he has twenty-five years' experience as an electrician, including bidding experience, and in his estimation the Employer is likely to be paid between \$140,000 and \$170,000 for the job. In the last year, the Employer also performed several smaller jobs for UCH in Philadelphia, including work on two Section 8 housing facilities owned by UCH.

The most recent Dun & Bradstreet Business Information Report for UCH, of which I also take administrative notice, indicates that UCH maintains offices in Philadelphia and Bryn Mawr, Pennsylvania. UCH was established in 1965 and employs about 237 employees. UCH operates more than 100 apartment buildings in Philadelphia and owns 175,000 square feet of office space. Additionally, about 47.5% of its operations involves providing long distance telecommunications services.

The Employer also has performed work for several other customers in Pennsylvania during the last twelve months. One of these jobs was the refitting of an older residence in Malvern, Pennsylvania, which is expected to last for several months. The Employer has also completed a job at a retirement community in West Chester, Pennsylvania, and three other jobs in Philadelphia. The record is unclear as to the duration or dollar amount of these jobs.

The Employer purchases the materials used by employees on its jobs from Rittenhouse Electric in Philadelphia and Tri-State Electric in West Chester. The materials, inter alia, include Steel City boxes, Levitan devices, switches, plates and outlets, and light fixtures, high-hat trims, receptacles, panels, and circuit breakers. Browne testified that these electrical supplies are not manufactured in Pennsylvania. The Employer also provides its employees with tools including cordless drills, screw guns, band saws, DeWalt drills, drill bits, ladders, pipe benders, halogen lights, ladders, fish tape and scaffolding. The Employer has three of each of these items. The testimony established that band saws cost around \$300, electric DeWalt drills cost \$250, electric screw guns cost \$300, and fish tapes costs \$40. The Employer also has three Ford F-150 vans, which employees drive to and from jobs. One of them is a 2001 model year vehicle. Employees wear uniforms that are provided by the Employer consisting of T-shirts in the summer and work shirts and work pants in the winter.

In *Tropicana Products, Inc.*, 122 NLRB 121, 123 (1958), the Board held that jurisdiction may be asserted in any case in which an employer has refused, upon reasonable requests by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled

and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the Employer's operations satisfy the Board's jurisdictional standards. In this case, the Employer's failure to appear at the hearing despite adequate notice constitutes a refusal to provide information sufficient to invoke the *Tropicana* rule.<sup>3</sup>

The foregoing evidence demonstrates that the Employer is engaged in interstate commerce sufficient to satisfy the Board's statutory jurisdiction requirement. The Employer regularly employs five employees and derives \$250,000 per year in sales. Moreover, the Employer's major customer is UCH, a large company manifestly engaged directly in interstate commerce, including long distance telecommunications services. Additionally, the Employer purchases numerous supplies and materials from suppliers located in Pennsylvania, which are manufactured outside Pennsylvania. In this regard, the Employer's purchase of a 2001 Ford van itself is sufficient to find statutory jurisdiction. I therefore find that the Employer is an employer engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record reveals that the Petitioner's purpose is to bargain collectively with employers concerning employee wages, hours and working conditions. Employees participate at the Petitioner's monthly meetings and serve as the Petitioner's officers and shop stewards. Accordingly, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act. See *Commonwealth Communications, Inc.*, 335 NLRB No. 62 (2001); *Ray Angelini Inc.*, 334 NLRB No. 61 (2001).

4. The Petitioner seeks to represent a unit of the Employer's journeyman electricians, apprentices and helpers and contends that two other employees should be excluded from the unit because they are close relatives of the Employer's owner.

Bruce Highland is the Employer's owner, president and only supervisor. He maintains offices at his home and at the shop in West Chester. The Employer employs five individuals who perform electrical work, Frederick Sturnack, Mike Keebler, Frank Bonazza, Robert Thompson and Phil Ziegler. Sturnack, Thompson and Ziegler are journeyman mechanics, and Keebler is an apprentice. The record does not indicate Bonazza's title or duties. Thompson is Highland's stepson, and he has worked for the Employer for eight years. Ziegler, Highland's son-in-law, has worked for the Employer for between two and three years.

The five employees usually work forty hours per week from Monday through Friday from 7:00 a.m. to 3:00 p.m. They may voluntarily work overtime on weekends, but they are paid their regular hourly rates for overtime work. Sturnack earns \$12 per hour, and Keebler earns \$11 per hour. The record does not indicate the wage rates of Bonazza, Thompson or Ziegler. Sturnack, Keebler and Bonazza are paid on an hourly basis, and the Employer makes no deductions from their gross pay for federal, state or local taxes, unemployment insurance or

---

<sup>3</sup> In this regard, the record shows that the Employer did not request a postponement of the hearing until the last work day before the hearing was scheduled. At that time the Employer indicated that it was unavailable to participate at a hearing until September 4 because of Highland's vacation. Granting the requested postponement would have significantly reduced the Employer's employees' opportunity to participate in a timely election.

Social Security.<sup>4</sup> The Employer makes these deductions for Thompson and Ziegler and also made deductions for the recently terminated employee. Sturnack, Keebler, Thompson and Bonazza do not receive any fringe benefits, but the record does not indicate whether Ziegler receives any.

Each workday, Highland gives the five employees a list of what needs to be accomplished. The employees generally work together at the same job sites, and Thompson and Ziegler do the same work as the other employees. On occasion, Thompson, Ziegler and Sturnack may be in charge of the jobs. Sturnack and Keebler both testified that Ziegler and Thompson receive no special privileges or treatment on the jobs on account of their relation to Highland. However, Highland purchased a truck in his own name that he gave to Thompson for his personal needs. Highland also pays for insurance on the truck, and Thompson pays for its upkeep. The truck has never been used for business purposes. The record established that unlike other employees, Thompson and Ziegler can write checks for the Employer in order to purchase supplies. Thompson and Ziegler do not reside with Highland.

Section 2(3) of the Act provides that an individual “employed by his parent or spouse” is excluded from the definition of “employee” within the meaning of the Act. In *N.L.R.B. v. Action Automotive, Inc.*, 469 U.S. 490, 495 (1985), the Supreme Court affirmed the “Board’s practice of excluding from a bargaining unit close relatives of the owners of a closely held corporation, even in the absence of special job related benefits.” The Board has limited this exclusion to the children of individuals with at least a 50% ownership interest in the corporation. See *NLRB v. Action Automotive, Inc.*, supra, fn. 7; *Cerni Motor Sales, Inc.*, 201 NLRB 918 (1973). Moreover, a relative of an employer’s owner may be an employee and nonetheless be excluded from the unit if he enjoys special benefits as a result of that relationship or if his special status aligns his interest more closely with management than with unit employees.

Section 2(3) does not exclude stepsons from the coverage of the Act. *Prior Aviation Service, Inc.*, 220 NLRB 460, 461 (1975). Nor does it exclude sons-in-law. Accordingly, Thompson and Zeigler should only be excluded if their familial relationship with Highland affords them special status so that they lack a sufficient community of interest with the other employees. I find that the record does not clearly indicate that either Thompson or Zeigler have a special status. Thus, they do not reside with Highland, and they do not receive any privileges on the job. Highland has purchased a truck for Thompson’s personal use, however, and the record is silent as to the amount of the remuneration of these two individuals and how it compares to the other employees. In the absence of this evidence and in view of an overall dearth of information as to how Thompson and Zeigler are treated, I cannot determine whether they enjoy special benefits that would align them with management rather than with the unit. Accordingly, I shall permit them to vote subject to challenge.

The unit sought by the Petitioner consists of journeyman electricians, apprentices, and helpers who work together, perform similar tasks, share common working conditions and clearly have a community of interest. Accordingly, I find the following employees of the Employer

---

<sup>4</sup> Thus, Sturnack testified that at his pre-employment interview Highland told him that he would be paid “under the table” for six months and then would be put “on the books.”

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**All full-time and regular part-time journeyman electricians, apprentices and helpers employed by the Employer at its West Chester, Pennsylvania facility, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

### **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 98, AFL-CIO**

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 9, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such

list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 15, 2001**.

Signed: October 1, 2001

at Philadelphia, PA

/s/

\_\_\_\_\_  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

177-2484-3700  
177-2401-6750-3300  
177-3925-2000-4000  
240-1700  
460-5033-7550-8000  
362-6798-2500